PROPERTY TAXATION AND OTHER ISSUES BEFORE THE REVENUE OVERSIGHT COMMITTEE

A Report to the 51st Legislature

December 1988

Montana Legislative Council

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A REPORT TO THE 51ST LEGISLATURE

from the

REVENUE OVERSIGHT COMMITTEE

By

Paul Verdon, Staff Researcher
Connie F. Erickson, Staff Researcher
Jeff Martin, Staff Researcher

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE PROPERTY REVALUATION PROCEDURES IN THE PROPERTY TAX LAWS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, the property revaluation procedures employed in the revaluation cycle ending January 1, 1986, and the resulting property valuation changes have drawn widespread criticism and contributed to the public dissatisfaction with property taxation in Montana, as evidenced by the response of the electors to Constitutional Initiative No. 27 and Initiative No. 105; and

WHEREAS, the 50th Legislature has been faced with numerous bills proposing changes in the property revaluation procedures; and

WHEREAS, it has been suggested that part of the problem with property revaluation is inadequate funding; and

WHEREAS, the citizens of the State of Montana expect and deserve a fair and accurate procedure for revaluation of property and believe that there may be deficiencies in the existing procedures.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee be assigned to study:

(1) the present property revaluation procedures;

(2) the successful property revaluation procedures used by other states:

(3) alternative procedures and recommendations for improving Montana's property revaluation procedures; and

(4) the level of staffing and funding necessary to successfully accomplish property revaluation.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 15, 1987.

SUMMARY OF RECOMMENDATIONS

1. LC 73 - "AN ACT TO AMEND THE LAW LIMITING PROPERTY TAXES TO 1986 LEVELS TO ALLOW AN INCREASE IN TAX LIABILITY WHEN THERE IS A DECREASE IN TAXABLE VALUATION FROM THE 1986 TAX YEAR; AMENDING SECTION 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

2. LC 74 - "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO PROPERTY UNDER A TAX PROTEST OR APPEAL PROCEEDING; ALLOWING A TAXING UNIT TO EXCLUDE THE TAXABLE VALUE OF PROPERTY SUBJECT TO A TAX PROTEST IN FIXING LEVIES; MAKING INTEREST ON PROTESTED TAXES A STATE RESPONSIBILITY; ALLOWING FOR BOND ISSUES WITHOUT AN ELECTION TO REPAY LOST TAX PROTESTS; EXCLUDING TAX PROTEST REPAYMENT BONDS FROM THE LIMITATIONS ON THE AMOUNT OF BONDED INDEBTEDNESS; AMENDING SECTIONS 2-9-316, 7-6-2321, 7-6-4231, 7-7-2202, 7-7-2203, 7-7-2221, 7-7-4101, 7-7-4201, 7-7-4221, 15-1-402, 15-10-202, 15-10-412, 20-9-142, 20-9-403, 20-9-406, AND 20-9-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

CHAPTER ONE

HOUSE JOINT RESOLUTION NO. 48: PROPERTY REVALUATION PROCEDURES IN THE PROPERTY TAX LAWS

INTRODUCTION

The 50th Montana Legislature passed House Joint Resolution 48, a measure to study the property revaluation procedures in the property tax laws and to require a report of the findings to the 51st Legislature. Specifically, the Revenue Oversight Committee was assigned to study:

1. present property revaluation procedures;
2. property revaluation procedures successfully used by other states and Canadian provinces;
3. alternative procedures and recommendations for improving Montana's property revaluation procedures; and
4. the level of staffing and funding necessary to successfully accomplish property revaluation.

At the June 1987 Revenue Oversight Committee meeting, committee members adopted a study plan for HJR 48. The study plan suggested that the 1987 Legislative Auditor's performance audit of the Property Assessment Division of the Department of Revenue serve as the starting point for conducting the study.

In late July 1987, Legislative Council staff surveyed Revenue Oversight Committee members to identify subject areas reviewed in the audit that members wished to examine in more detail. Respondents indicated that two

general areas should be explored:

1. control over the property appraisal and assessment process; and
2. the resources necessary to complete property reappraisal.

This report will provide a brief historical background on property appraisal and assessment in Montana, an overview of the current system, a comparison of property tax administration in other jurisdictions, and 0options for improving the Montana system. This study will also look at the current property reappraisal cycle and offer options for improvement.

Historical Background

From 1889 until 1973, Montana operated a property tax administration system not unlike the systems operating in many other states today. An elected County Assessor was responsible for assessing all taxable property, including motor vehicles, in the county except for those properties assessed by the state. The assessor was also responsible for any taxes lost on property that was not assessed. The County Commissioners served as a County Board of Equalization. This board served three distinct functions: it was a board of review, a board of equalization, and a board of appeals. The work of the assessor was subject to examination by this county board. In its role as a board of review, it could increase individual assessments. But only in its function as a board of appeals could it reduce individual assessments.

The State Board of Equalization was an assessing, administrative, and quasi-judicial agency mandated by Article XII, section 15, of the 1889 Montana

Constitution. Its members were appointed by the Governor, subject to confirmation by the Senate. The state board was responsible for assessing the net proceeds of mines and the intercounty property of the utility companies. It also had the power to supervise the work of the County Assessors and the County Boards of Equalization.

While it had the power to issue rules and regulations governing county assessment officials, the state board seldom exercised it. The board's assistance to the counties consisted primarily of responding to requests for help and answering telephone calls and letters from officials with particular assessment problems. The state board met once a year with the assessors to discuss problems and to develop assessment guides and valuation schedules for personal property. However, the use of these guides and schedules by the assessors was discretionary rather than mandatory.

The state board's powers of review and equalization allowed it to change individual assessments or valuations of a class of property in compliance with specific procedures. This power to change the valuation of a whole property class was seldom exercised.* The state board also had the power to assess property that had not been assessed. However, the board seldom embarked on a campaign of equalization; rather, such initial assessments and changes in assessments were usually made in response to requests.

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*In 1958 the state board raised the assessments of three classes of land in Toole County, one of the very few examples of the board's exercise of this power. Montana Legislative Council, Property Taxation in Montana (Helena, Montana: Montana Legislative Council, 1960), p. 28.

As a board of appeal, the State Board of Equalization heard appeals from taxpayers dissatisfied with the decision of their county board. The state board also heard tax appeals on properties that the state board itself had assessed.

While on paper this system appeared to be efficient and reasonable, in reality many problems developed. Assessors were ignoring the constitutional mandate to assess all property at full cash value. Instead, fractional assessments became the norm, and these fractional rates were actually set by the County Assessors at their annual meetings.[1] This was a clear violation of statute and far in excess of their statutory authority. The Legislature, instead of attempting to bring assessors into compliance with the statutes, enacted existing assessment practices into law.

These problems with the assessors were created primarily because assessors were elected officials. Faced with the necessity of getting elected every 4 years, assessors were tempted to engage in underassessment of property. From the assessors' viewpoint, such actions definitely had favorable consequences:

1. their neighbors (and electors) would receive tax breaks by having their property underassessed;

2. if county assessments were kept low, the tax burden would be shifted to other counties; and

3. lower assessments meant that other city and county officials would be forced to raise mill levies in order to maintain sufficient revenue, therefore the blame for higher taxes would be placed on them.[2]

In all fairness to the elected assessors, it must be noted that they were most often unfairly blamed for high

taxes and so acted primarily in self-defense.

The Legislature also allowed the assessors a certain degree of discretion in assessing property because the assessors were better able to make judgments on a case-by-case basis than was the Legislature. This discretion, however, should have been guided by set standards and procedures that would have limited an assessor's discretion as to the implementation of legislative policy, thus ensuring the Montana constitutional requirements for uniform assessment of property. Unfortunately, in Montana such standards and procedures were absent or ignored for so many years that eventually the County Assessors were making tax policy decisions, wielding greater authority than the Legislature in some instances, and exercising power far exceeding their statutory authority. This last excess was clearly evident in the budgetary authority exercised by assessors over county, city, and school district officials.

> After a unit of government has reached its maximum levy limitation, its future budgetary policy is largely in the hands of the assessor. The decision made in his office as to the percentage of market value that will be used for assessment purposes is almost controlling. Moreover, decisions made by the assessor are more apt to be influenced by consideration of his political future than by the legitimate revenue needs of local government. Thus we have the spectacle of the county assessor, whose sole function is to find and value property at its full value, charting the fiscal policy of most local governments.[3]

Problems also developed with the State Board of Equalization. Through the use of its rulemaking authority, the state board set tax policy regardless of legislative intent. This disregard of the Legislature's authority in the area of taxation was reinforced by

Montana Supreme Court decisions holding that legislative control over the State Board of Equalization was directory only.[4]

The tax appeals process also had built-in inequities because the County and State Boards of Equalization were called upon to rule on appraisals made by their own staffs. This system put taxpayers at a clear disadvantage.

By 1972, Montana's property tax system was beset with excessive discretionary authority on the part of elected assessors, fractional property assessments that varied from county to county, and a lack of legislative initiative to force compliance with state law.

In 1971, in preparation for the upcoming state Constitutional Convention, the Montana Constitutional Convention Commission published its findings on the system of property taxation in Montana. The report discussed the role of the County Assessor, looked at the then current tax appeals process, and addressed the issues of underassessment, lack of uniform assessment, and the role of the State Board of Equalization. The commission also discussed three alternative methods of property tax administration:

1. complete centralization;
2. complete centralization of the assessment administration, with tax collection and enforcement handled locally; and
3. well-coordinated joint state-local administration.[5]

In its conclusion, the commission posed the following questions to the delegates of the Constitutional Convention:

> Is it necessary to freeze property tax administration detail in the constitution? If so:
>
> Should assessors be elected?
>
> Should minimum qualifications be established for assessors?
>
> Should assessment districts be defined by county lines?
>
> Should the County Commissioners continue to function as both a board of equalization and a quasi-judicial review board?
>
> Should the State Board of Equalization be the tax administrator for Montana?
>
> Should the state board be confined to property taxation only?
>
> Should the review of assessments continue to reside in the administrative bodies, or should review and administration be separate functions?[6]

With the report of the commission in hand, the Constitutional Convention tackled the issue of property tax administration. The 1889 Constitution spelled out in great detail the administration of the property tax in Montana. It was the view of the 1972 convention that the details should be left to the Legislature and the constitution itself should contain only basic principles and doctrines important enough to be enshrined in the document. As a result, Article VIII, section 3, of the 1972 Constitution stated simply that "The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." In the area of tax appeals, Article VIII, section 7, of the 1972 Constitution stated that:

> The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The Legislature shall include a review procedure at the local government unit level.

As to the actual administration of the property tax, the Revenue and Finance Committee of the Constitutional Convention proposed a solution that would place accountability for the system in a state agency. The committee recommended that the present state-county system be replaced by a "state-level system of appraisal, assessment and equalization". It further recommended that tax administration be established by the Legislature and administered by the Executive Branch, not by a constitutionally mandated board immune from control by the people. The issue of elected assessors was not addressed by the committee's report, although the Constitutional Convention Commission did pose the question of elected assessors. A member of the Local Government Committee offered to the convention a proposal that would have eliminated all elected county officials, including assessors. However, this proposal met with a great deal of opposition and little support and was defeated.[7]

The 1972 Constitution, then, gave to the state the responsibility for appraising, assessing, and equalizing property values within the state. To implement this provision, the 43rd Legislature established the Property Assessment Division of the Department of Revenue. All appraisal personnel employed in the counties became state employees, and the elected assessors became agents of the department. All costs of the property appraisal and assessment process, including the salaries of the elected assessors, were to be paid from the state general fund.

As a result of this major change in the property tax system, the total taxable valuation of the state increased by more than 15% from 1972 to 1973 and by more

than 30% from 1973 to 1974. Previous year-to-year increases were generally less than 10%.[8]

Current Status of Property Tax Administration

The Department of Revenue's Property Assessment Division is responsible for the valuation of all property, both real and personal, in the state. Valuation means locating the property, classifying it, and determining its value. The department is also responsible for adjusting and equalizing the values of taxable property among the counties and the different classes of taxable property in the counties and between individual taxpayers.

In order to implement these responsibilities, two offices -- that of the County Assessor and that of the County Appraiser -- exist at the county level. The County Appraiser's office consists of an appraisal supervisor, appraisers, and clerks. They are charged with the appraisal of real property (commercial, residential, and agricultural) within the county. The County Assessor's office consists of an assessor, a deputy assessor, and clerks. They are charged with appraising all personal property (commercial and agricultural), determining the taxable value of both real and personal property, maintaining the county assessment roll, and calculating the property taxes once the mill levies are set. According to 7-4-2203, MCA, County Assessors may be elected or appointed.

Five counties have combined assessor/appraiser offices. Their staffs include an assessment/appraisal manager, appraisers, assessment technicians, and clerks who perform assessment, appraisal, and clerical duties. There are no elected assessors in these combined offices.

The department has five area appraisal managers, each stationed in the field office in one of the five regions. These managers oversee the activities of the department's field staff in the counties. (Originally, there were 10 area managers, but budget cutbacks have reduced the number to 5.)

The state office is responsible for appraising timberland, industrial property, and centrally assessed properties, both real and personal. The state office also provides various administrative and support functions for the counties, defends all lawsuits that arise, and audits the county offices.

State law requires that all appraisers be certified. (15-7-107, MCA.) Assessors are not required to be certified but are encouraged to participate in the appraisal schools offered by the Department of Revenue. The costs for attending these schools are paid by the state.

The fiscal 1988 operating budget for the Property Assessment Division is $10.2 million. Of this amount, $7.4 million is allocated to the operation of the county offices. This allocation includes salaries, benefits, contracted services, supplies, communications, travel, utilities, repair and maintenance, and other miscellaneous expenses. Each county is responsible for 34% of the elected assessor's salary and 30% of the appointed deputy's salary. In addition, each county provides space for both the assessment and the appraisal offices in the courthouse. In nine counties, the state pays for office space outside of the courthouse.

The division provides counties additional assistance not

included in the county operations budget. All of the necessary forms and manuals are provided by the state. All of the pricing-out of real property is done by state computers. The Helena office also provides appraisal and assessment assistance to counties in the event of illness or unexpected emergencies.

Recently, the implementation of SB 200 (Ch. 611, Laws of 1987) has also resulted in an additional expense for the state in providing assistance to the counties.**

Funding for the Property Assessment Division is provided from the state general fund.

Problems With Current System

In 1986, the Legislative Auditor conducted a performance audit of the Property Assessment Division of the Department of Revenue. The audit identified three areas that merited attention by the department:

1. management of controls over property valuation and controls over data processing;

2. resources to complete property valuation work; and

3. legislative and administrative changes.

Within these areas were found specific problems that needed to be addressed. Among them were inconsistencies in property valuation practices, poor communication

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**Senate Bill 200 replaced the light vehicle license fee with a 2% ad valorem property tax, replaced the fee in lieu of taxes on motorcycles and quadricycles with a 2% tax, and permitted a county to impose a 0.5% ad valorem tax on autos, trucks, motorcycles, and quadricycles. Implementation of this legislation required the employment of 36 additional FTE by the Department of Revenue.

between the division and county staff, inadequate organizational control over elected assessors, and the lack of a centralized computer system.

The audit yielded 19 recommendations, only one of which called for a significant change in the system. The remaining 18 called for improvements to the current system.

In response to the audit, the Department of Revenue concurred either completely or partially with all of the recommendations. The department also indicated which recommendations were already being implemented, which ones were in the planning stages, and which ones required additional funding.

From a county perspective, the problems with the appraisal and assessment system can be identified as the current separation of administrative responsibilities and discontinuance of funding for assessors' salaries and for computers, computer access time, and office space. These problems are, in part, attributed to a general breakdown of communications between the department and locally elected officials. This breakdown in communications is especially frustrating to county officials when policy decisions are involved.

To address the problems, the Montana Association of Counties (MACo) drafted a constitutional initiative that would have returned property tax appraisal and assessment to the county level, with full funding provided by the state. The system would have been under the policy direction of a State Equalization Commission. However, MACo eventually withdrew its support of the initiative. Although a group of local officials independent of MACo continued to collect signatures to place the initiative

on the November 1988 ballot, its attempt fell short and CI-51 failed to qualify.

To address the problems raised by MACo regarding the property tax system, the department and MACo organized an advisory committee made up of department officials and County Commissioners. The purpose of the committee is to discuss and find solutions for problems that arise between the state and the counties. This improvement in communications between the state and the counties is leading to better relations between both entities and should positively affect the property tax system in the long run.

Property Reappraisal Cycles

The 44th Legislature enacted legislation in 1975 requiring the Department of Revenue to develop and implement a cyclical appraisal plan for all property in Montana. (Ch. 294, Laws of 1975) The new law required that not less than 20% of all property in the state be reappraised and that the new values be placed on the tax rolls annually. Implementation of this legislation resulted in numerous lawsuits being filed during 1975 and 1976. As a result, the Governor issued an executive order returning all property values to 1974 levels until settlement of the disputed cases by the Montana Supreme Court. The cyclical appraisal plan was ultimately found to be constitutional by the Supreme Court. However, the court also found that the appraisal plan was void and without legal force because it had never been legally adopted as required by the Montana Administrative Procedure Act.[9]

In 1977 the 45th Legislature appropriated funding for the Department of Revenue to ensure that all property would

be reappraised and placed on the tax rolls for the 1978-79 property tax year. With this accomplished, the next 5-year appraisal cycle began on January 1, 1979, with the new values to be placed on the tax rolls commencing January 1, 1984.

Some major problems developed during the early portion of the second cycle. Appraisal staff had to be trained. Funding and staff resources were reduced. Nonstandard data collection procedures and inadequate property description records led to duplication and the collection of excess data. A computer-assisted appraisal system was lacking. In 1981, almost halfway through the 5-year cycle, only 5% of all properties had been reappraised. In that same year, the department asked the Legislature to extend the cycle by 2 years, which was done. The second reappraisal cycle ended on December 31, 1985, and cost about $25 million. It is anticipated that the current cycle will cost about the same.[10]

The latest reappraisal program resulted in an average increase of 121% in the value of residential property and other real property statewide. To mitigate the effects of this increase, the Legislature lowered the tax rate on residential and commercial property from 8.55% to 3.86%. (Ch. 427, Laws of 1987)

The 1987 Legislature also enacted other legislation to address some of the problems that arose after this second reappraisal cycle. One measure delayed placement of the new values resulting from reappraisal on the tax roll for 1 year after the completion of the revaluation cycle. (Ch. 596, Laws of 1987) It also required that an appeal of the new value must be made prior to placement of the new value on the tax roll. Another measure required the department to conduct a stratified sales assessment ratio

study of all residential, commercial, and industrial real property and improvements and of all other real property and improvements. (Ch. 613, Laws of 1987) The study was to be performed on a statistically valid sample of sales in 13 sales assessment areas in the state. Under this method, all taxable property in each area would be considered revalued for each tax year based on the results of the study and on any percentage adjustments that were required.

The department hoped that this legislation would incrementally increase the valuations over the 5-year cycle in order to avoid the severe valuation jumps that occurred in 1986. However, it was generally believed that the results of the first study would show a statewide drop in valuations that could result in higher mill levies and higher property taxes.

The present cycle began on January 1, 1986, and is scheduled to end on December 31, 1990. But the June 1986 Special Session of the Legislature passed legislation that delayed the startup of the reappraisal program. Senate Bill No. 19 (Ch. 29, Special Laws June 1986) mandated that the Department of Revenue send a revised standard property tax classification and appraisal notice to each property taxpayer whose 1986 assessment on Class 4 property increased, as a result of reappraisal, 180% or more when compared with the 1985 assessment. The legislation also extended the application deadline for reduction in 1986 taxable valuations and required the department to develop a standardized classification and appraisal form comprehensible to the taxpayer.

Senate Bill No. 20 (Ch. 35, Special Laws June 1986) required the department to send new notices and extend the appeal deadline for taxpayers whose land had been

reclassified from agricultural to suburban as a result of the 1985 revisions to the greenbelt appraisal law. (Ch. 699, Laws of 1985.) This reclassification meant huge increases in appraised value. Senate Bill No. 20 also amended the 1985 law to prevent such increases from happening again.

Other factors have impeded the department's ability to make substantial headway on reappraisal. During 1986 and 1987, the Property Assessment Division suffered multiple budget reductions and the loss of five area managers and two area field supervisors. With the passage in 1987 of SB 200 (Ch. 611, Laws of 1987) and HB 436 (Ch. 613, Laws of 1987), the division's resources were diverted to the implementation of the new laws. The department is now halfway through the 5-year reappraisal cycle, and the reappraisal plan is still being formulated. Final adoption and distribution of the plan are not scheduled until March 1989. The reappraisal manual for commercial property was distributed in March 1987, but the residential and agricultural manuals were not ready until May of this year.

Also, the results of the first annual sales assessment ratio study were released in February 1988. Of the 13 areas, 5 experienced a decrease in taxable value and the remaining 8 either experienced an increase or showed no difference. The statute called for percentage adjustments to the valuations of properties in a specific area when certain conditions were met. However, the department ruled that this annual revaluation was not a cyclical reappraisal and, therefore, because of I-105 and SB 71,*** the department could not increase the taxable

***Initiative 105, passed by the voters in 1986, limited property taxes on certain classes of property to the amount levied for taxable year 1986. Senate Bill No.

value of property in those areas in which the study results showed an increase. The areas that showed a decrease, however, would have their taxable values lowered.

In the audit of the Property Assessment Division, the Legislative Auditor analyzed the resources of the division available to complete reappraisal. The auditors looked at the current resources, the number of properties to be reappraised, and the delays in starting up the cycle. The audit concluded:

> The available information indicates the division, with current resources and present responsibilities, will not be able to adequately complete property reappraisal in a timely manner as required by legislative mandates. With less staff and time to complete reappraisal during the 1986-1990 cycle, the division's ability to effectively address other reappraisal problems which may occur may also be affected.[11]

Given the additional delays that have occurred since this audit was released, it now appears likely that reappraisal will not be completed by the end of 1990. The department is considering two possibilities:

1. a 2-year extension to the reappraisal cycle and additional resources comparable to the FY 1986 level; or

2. a 2-year extension to the cycle, maintenance of current staffing levels, and a commitment to online data capture and computer-assisted appraisal and assessment procedures.

Either of these possibilities will require legislative

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71 interpreted and clarified the initiative. It also extended the tax limitation to all classes of property and provided for an increase in the tax liability of a taxing unit if the voters in the unit approve such an increase.

action.

Ideally, property should be reappraised every year. However, for many states a cyclical reappraisal program is the most efficient way, given their resources, to accomplish reappraisal. Currently, 24 states have such programs with reappraisal cycles ranging from 2 years to 10 years. Over one-half of these states have a 4-year or a 5-year cycle.

Although Montana's last cycle took 7 years and this current cycle may follow suit, increased automation, which the department is currently pursuing, should allow for a 5-year cycle in the future. However, with a computer assisted mass appraisal system and the provisions contained in HB 436, the 5-year cycle could be replaced by annual reappraisal.

The last cycle resulted in lower tax rates to compensate for the increased valuations. If rates continue to be lowered at the end of a cycle, then a shorter cycle would result in a faster erosion of the tax base.

Currently, all funding for the reappraisal program is provided by the state. There is no county funding specifically and directly for the reappraisal cycle. However, counties do provide office space for the appraisers which could be considered an indirect cost reimbursement that is provided by the county.

Property Tax Administration in Other States/Provinces

Over the years, the property tax has become the major source of funding for local governments and school districts in all 50 states. The tax has also become increasingly more complex to administer because of

technological advances in valuation methods as well as the increasing complexity of properties. States have responded by evaluating their property tax administration systems and revamping them to meet their own needs. However, there are some comments that can be made about property tax administration that apply generally to most of the states.

The primary assessing level in the majority of the states is the county. Some states assess at the township or town and municipality level. Maryland, like Montana, assesses at the state level. The overwhelming majority of states perform some kind of central assessment, be it public service, intangible personal, or minerals and petroleum. Almost one-half of the states have a statutory cycle of real property assessment other than 1 year. All but three states issue either appraisal or assessment manuals. Twenty-seven states elect their assessors, 13 states appoint them, and 10 states both elect and appoint them. Thirty states require that assessing officers be certified.[12]

The degree of control exercised by the state over the administration of the property tax varies from state to state. In Maryland, appraisals are performed by state employees under the complete supervision of the department of Assessments and Taxation. Hawaii, on the opposite end of the spectrum, has completely decentralized its system to the point that there is no state agency responsible for any aspect of the property tax. It should be noted that Hawaii's geography lends itself to this sort of administrative setup -- there are only four counties in Hawaii, and they are noncontiguous. Also, there are no centrally assessed properties in Hawaii. In between these two states can be found a variety of administrative models.

The Canadian provinces are also experiencing changes in the administration of their property taxes. The problems they have incurred in recent years are similar to those faced by their American counterparts: inequitable assessments; poor understanding of the system by taxpayers; too long a period between revaluations; inadequate assessor training; etc. Two of the western provinces undertook extensive studies of their respective property tax systems in order to make improvements. The result of both studies was a system unique in North America.

British Columbia and Saskatchewan have created independent agencies to appraise property for purposes of property taxation. The British Columbia agency has been in existence since 1975 and the Saskatchewan system since last year. Each agency is a fully independent body, completely separate from the provincial government and governed by a board of directors appointed by the Lieutenant Governor of the province. The board, in turn, selects a chief executive officer responsible for the day-to-day operation of the agency. Each province is divided into regions for administrative purposes. In British Columbia these regions are subdivided into assessment areas. In addition to overseeing the field operations, the central agency also provides technical assistance, administrative services, and research.

Funding for these agencies comes from the provincial governments as well as from the municipalities. The British Columbia agency has the authority to levy a tax on all property in the province for its operation. In addition, the agency markets some of the assessment information it has developed and provides online access to assessment roll information for a fee.

While no such structure as an independent agency exists in the states, Maryland's system comes very close. The state is responsible for 100% of the administration and funding of the property appraisal function. There is an assessment office in each county seat, headed by a supervisor of assessments appointed for an indefinite term by the state Director of Revenue and Taxation. The person is chosen from a list submitted by county officials. All of the employees in the county assessment office are state employees. Statewide coordination is provided through a system of regional or area supervisors. Maryland has a 3-year revaluation cycle, with the increased values phased in over the next 3 years.

As noted earlier, the degree of control exercised by the state in the administration of the property tax varies greatly from state to state. However, with the exception of Hawaii, recent changes in some state systems and changes being contemplated by others seem to tend toward more centralized state control.

Options for Change

There are at least four options available for consideration in improving Montana's appraisal and assessment process:

1. return the appraisal function to the counties;
2. consolidate the assessment function under the Department of Revenue;
3. retain the current system with some revisions; or
4. create an independent agency charged with the responsibility of appraising all property in the state.

These four options are presented with reference to costs, advantages, disadvantages, and constitutional and statutory revisions.

Option 1: Return the appraisal function to the counties.

This option would return Montana to the system in operation prior to 1972. The County Assessor would be responsible for the appraisal of both real and personal property. The position of County Appraiser would be eliminated. However, a county could opt to retain the appraiser as a county employee under the supervision of the County Assessor.

The state would continue to assess gross proceeds, net proceeds, and intercounty property. Equalization of property values between counties, between different classes of property, and between individual taxpayers would also be the responsibility of the state. This function could be performed by a State Board of Equalization or, as currently exists, by the State Tax Appeal Board.

There are other possibilities for state involvement under this option. These include issuing guidelines or regulations, furnishing forms and manuals, directing proceedings against negligent assessors, auditing county assessment offices, visiting counties to investigate methods and to assure compliance with tax laws, offering technical assistance to assessors, and providing continuing education programs for assessors and their staffs. The role of the state in a county-controlled system could range from general supervision to direct involvement.

The cost of returning the appraisal function to the counties depends on two factors: the source of the funding and the degree of state involvement in the process. Currently, funding for the operation of the county offices comes from the state general fund, with some exceptions.**** If this source of funding is continued and at the same level, as some counties prefer, then the cost to the counties could remain the same. In fact, the cost could actually decrease if the state were to assume full responsibility for the salaries.

Another source of revenue would be a statewide levy that would then be allocated back to the counties. In this case, the cost to the counties would depend on the amount of the levy. It could fund the entire property tax system or only a portion of it. In the latter case, the counties would most likely have to make up the difference.

A final source of funding would be for each county to levy an additional amount to fund its own operation. In this case, the costs would devolve entirely to the counties.

The second factor in determining the cost of returning the appraisal function to the counties is the role of the state. The extent and source of state funding for the property tax system will depend on the Legislature.

If the counties were required to fund their own operations, the costs would run between $7 million and $11 million per year. This amount is based on FY 1988

****At present, each county provides 34% of the elected assessor's salary and 30% of the appointed deputy's salary. In addition, each county provides office space in its county courthouse.

figures plus the additional assistance provided to the counties by the state that is not included in the Department of Revenue's county operations budget of $7.4 million.

From a county viewpoint, the greatest advantage in returning the appraisal function to the County Assessor is local control. County officials have more immediate knowledge of the local conditions and the resident taxpayers. Reappraisals could be done annually according to uniform, equitable assessment guidelines, but with local conditions being taken into consideration. Another advantage is that counties have a large stake in the property tax system and may be more likely to attend more carefully to its administration. Also, an office directed by a locally elected official could prove more responsive to local taxpayers' needs.

There is concern, however, that a return to a county-controlled system could result in the same problems that plagued the system prior to 1972 -- namely, underassessment and fractional assessments. Knowing that they have to face the voters in order to retain their jobs, assessors may not be as aggressive as they should be in locating property subject to taxation in their counties. By not listing all the taxable property, an assessor could shift the tax burden onto the remaining taxpayers in a county and could affect the budgets of the local taxing entities.[13]

In order to return the appraisal function to the counties, statutory and constitutional changes would have to be made. Article VIII, sections 3 and 4, of the Montana Constitution would have to be amended. Also, Title 15, chapters 1, 7 through 10, 15, 16, 23, and 24, MCA, would need extensive revision. All references to

state control would need to be deleted and the statutes rewritten to show the new role being played by the counties.

Option 2: Consolidate the assessment function under the Department of Revenue.

This option would give the Department of Revenue complete responsibility for the appraisal and assessment process. Each county would continue to have an appraisal and assessment office. However, the office would be staffed completely by state employees. The office of elected assessor would be replaced by an appointed position. The position of County Appraiser could be retained, but occupied by a state employee. The network of area managers could remain in place as a means of providing statewide coordination.

If the assessor's position is retained, the state would have to assume responsibility for the full salaries of the assessors and their deputies. In addition, the state would have to pick up the expenses involved in office space (e.g., utilities, rent, etc.) currently furnished by the counties.

The state could continue to provide funding for the program either through a general fund appropriation or an alternative source, such as a statewide levy. Another possibility would be for the state to charge the counties a fee for providing appraisal and assessment services.

There are a number of advantages to consolidating the assessment function under the Department of Revenue:

1. uniformity of assessment that could reduce the need for the equalization function;

2. ability to better inform taxpayers regarding assessment practices;

3. development of standard operating procedures that are applied statewide;

4. improved effectiveness and taxpayer understanding of the process;

5. economies of scale through assignment of personnel, provision of support services, and standardization of assessment office procedures; and

6. improved professional training for personnel.

There is a fear among the counties, however, that state control of the appraisal and assessment process would lead to state control over other elected county officials.[14]

In order for the state to assume control of the assessment function, Title 15, chapter 8, MCA, would have to be revised. If elected assessors were to be eliminated, 7-4-2203, 7-4-2211, 7-4-2401, 7-4-2503, and 7-4-2505, MCA, would need revision and Article XI, section 3, of the Montana Constitution would have to be amended.

The option of consolidating the assessment function under the direct control of the Department of Revenue was one of the recommendations made by the Legislative Auditor in the performance audit of the Property Assessment Division. The audit found that under the current system, the division has no direct control over the elected assessors or their staffs. The division cannot require assessors to meet minimum qualifications nor can the division evaluate the performance of the elected assessors and require corrective action. The audit concluded that as long as assessors remain elected officials, there will be "inadequate organizational

control".[15] In response to the Legislative Auditor's recommendation, the division stated, "This one action will do more to lower administrative cost and improve supervisory control than any other single audit recommendation."[16]

Option 3: Retain the current system with some revisions.

A third option would be to retain the current system of state-controlled appraisal and county-controlled assessment but make some revisions, such as requiring the certification of elected assessors, requiring the state to assume full funding of the county operations, increasing the number of area managers to eight, and automating the county appraisal offices.

In 1979, a certification program was established for appraisers. The Department of Revenue offers appraisal certification in three fields: residential property, agricultural land, and commercial and industrial property. Within 1 year of employment, each appraiser must be certified in one of the above-mentioned fields. Although there is no certification requirement for assessors, the department offers assessing schools that assessors are encouraged to attend. Currently, 28 states require assessing officers to be certified. The majority of these states also elect their assessors.[17] In a field as technical as appraising and assessing, it would be to a county's (and a taxpayer's) advantage to have trained and certified personnel.

The second revision under this option is for the state to assume full funding. Prior to 1987, the state paid 100% of the salaries of the elected assessors. Beginning in FY 1987, the state's portion dropped to 66% for the assessors and 70% for their deputies. The counties

maintain that because the Department of Revenue is responsible for the operation of the county offices, it should provide full funding for the salaries. On the other hand, the department feels that if a county chooses to elect its assessor rather than appoint one, the county should pay the whole salary.[18] This salary issue is one that the counties feel very strongly about, as evidenced by a recent court case challenging the change in funding.[19] The cost to the state to fund 100% of the salaries would be between $500,000 and $600,000 annually.

Poor communication between county and state was identified by the counties as a major problem in the current system. Because of the size of the state and the need to provide effective communication between the department and the counties, the department divided the state into 10 areas, each with a resident area manager. This person was responsible for facilitating communication and handling problems as they occurred at the county level -- in other words, serving as a link between the Property Assessment Division and the county offices. However, in recent years the number of area managers has been reduced from 10 to 5 due to budget reductions. Each remaining manager's geographical area has been greatly increased, thus reducing the manager's ability to effectively handle the job's responsibilities. Increasing the number of area managers to at least eight would aid significantly in the administration of the property appraisal and assessment procedures by providing better communication between the department and the counties. The cost of funding three additional area managers would be approximately $150,000 a year.

One of the problems with the current system is the inability of the County Appraiser to value real property on a computer. Currently, the appraiser records all of

the information about a property by hand onto a department form. This form is then forwarded to Helena to be priced-out and entered into the state data system. During income tax season, the department's data processors are extremely busy, and there can be a delay of several weeks before the information is returned to the counties for recording on the tax rolls. If there are errors in the information from Helena, the whole process is repeated.

An automated program would help provide a lasting solution to many of the operational problems related to property reappraisal, i.e., lengthy data entry delays, inconsistent valuation procedures among counties, duplication of effort, and the inability to readily access pertinent data for legislative inquiry. This type of network would also aid the many administrative functions performed by the division's field staff. Some examples of this aid would include electronic mail, messaging and other data transmission functions, and spreadsheet and word processing functions.

This option would require no constitutional revisions. However, the certification of assessors would have to be statutorily enacted, as would the reinstatement of full funding for assessors' salaries and the addition of three area managers.

Option 4: Create an independent agency charged with the responsibility of appraising all property in the state.

In the study plan for HJR 48, the question was asked, "Should responsibility for property appraisal and assessment be removed from both state and county control and delegated to another authority?"

As discussed previously, the Canadian provinces of British Columbia and Saskatchewan have created independent agencies to appraise property for purposes of property taxation. The British Columbia agency has been in existence since 1975 and the Saskatchewan system since last year. Both were created in response to severe inequities in assessments caused by a number of circumstances.

The Saskatchewan Assessment Management Agency (SAMA) is a fully independent body, completely separate from the provincial and local governments. There is a seven-person board of directors, five of whom are required to be elected municipal officials. These five represent the rural municipalities, the urban municipalities, and school district trustees. The remaining two directors are representatives of the provincial government. The rationale for this makeup of the board is to allow for greater participation by local governments in establishing policy and in managing the appraisal system.

The board of directors appoints an executive director who serves as the chief administrative officer for the agency. The agency is divided into four divisions: Operations, Technical Services, Administration, and Policy and Research. Operations is responsible for the on-site management of the seven regional appraisal offices. Technical Services provides computer support services, coordinates and audits all assessments in the province (ensuring uniform and correct application of the assessment manuals), and provides information to government agencies and the public. Administration provides central support services, primarily in the areas of finance and personnel. Policy and Research is responsible for the development of assessment policy recommendations and manuals.

SAMA is funded by a grant from the provincial government as well as by revenue from the municipalities. The provincial grant must equal the operating budget of the old provincial assessment department. Any additional funding must be shared equally between the province and the municipalities.

The British Columbia Assessment Authority is governed by a six-member board of directors appointed by the Lieutenant Governor of the province. The board, in turn, appoints an assessment commissioner who is charged with the overall responsibility for the administration of the Assessment Authority. There are two major divisions: Field Operations and Administrative Services. Field Operations is responsible for the 27 assessment areas and offers support and appraisal services. Administrative Services handles such things as finance, personnel, field audits, legal services, information services, and staff relations.

The British Columbia Assessment Authority is funded roughly 60% from a tax levy on all property, 25% from a provincial grant, and 15% from other sources. (Such sources include the sale of microfilm and data, as well as the online access to assessment roll information.)

SAMA came about after a 2-year study of issues related to the financing of local governments and to identifying options for addressing those issues. The British Columbia authority also resulted from a 2- to 3-year study.

This idea of an independent agency has no real counterpart in the United States. There are some components, however, that may be attractive: the

centralization of the appraisal function; the separation of the appraisal function from the tax function; the privatization of a government service; and use of property taxes to pay for property tax administration.

However, there are also some drawbacks to an independent agency. For example, the use of elected officials on the SAMA board of directors could result in a frequent turnover on the board if members should lose an election during their board term. The effect could be sharp changes in policy direction that would have negative effects on continuity in the appraisal process. The removal of the appraisal process from governmental control could also result in a lack of accountability to the property owner.

The creation of an independent agency would take a great deal of research and study. It is not an idea that can be implemented overnight because it represents a bold step away from the traditional notion of property tax administration as a governmental function. However, with privatization being discussed more and more as an alternative to government-provided services, an independent property appraisal agency merits further discussion.

Other Possibilities for Simplifying the Appraisal and Assessment Process

Simplicity is a word that is often used in describing a good property appraisal and assessment program. By simplicity is meant a system that is readily understandable to the taxpayer. Two components of such a system are limited classification of property and an understandable method of calculation. Many tax experts agree that four to five classes of property are generally

sufficient for any property tax system. Montana currently has 20 classes. A reduction in the number of property classes would simplify Montana's system. Another form of simplification would be to eliminate the tax rates and use market value as taxable value. This would be an incentive to state and local governments to keep appraised values current. It would also eliminate any possible hint of discrimination in the treatment of different types of property.

Another possibility for simplifying the process would be to eliminate the taxes on personal property. The problem here is one of replacement revenue for local governments and school districts that rely heavily on property taxes as a source of revenue. Some suggestions for replacement are a sales tax, an income tax surcharge, or increased tax rates on real property. The latter alternative would apply only to those types of real property that also generated personal property taxes, e.g., movie theaters, motels, service stations, etc.

Another suggestion would be to fund the school foundation program and the university 6-mill levy from some other source. The property tax would then become a source of revenue for local governments only. For this reason, the state could remove itself from the administration of the tax, resulting in considerable savings to the general fund.

Summary

Montana has a unique system of administering its property tax. Many tax people would say that the Montana system encompasses the "best of both worlds" by having centralized appraisal yet using locally elected assessors. At a recent property tax seminar in St. Paul,

Minnesota, Gene Burner of the Maryland department of Assessments and Taxation commented that when the topic of centralized property tax administration is discussed, Montana should be the one leading the discussion.

The Montana system is not without its problems. This was clearly evidenced by the performance audit of the Property Assessment Division. But some remedies have been identified and, in some instances, are already being implemented. (For example, automation of county appraisal offices.)

Cooperation and communication between the Department of Revenue and the counties are the keys to resolving such problems. Therefore, the best course at this time is to allow the department to continue to implement remedies and to continue dialogue with the counties through the MACo/Department of Revenue Advisory Committee.

NOTES

[1] Teresa Olcott Cohea, "Property Tax Assessment: A Century-Long Struggle for Structured Discretion" Montana Public Affairs Report (September 1978), p. 2.

[2] Ibid.

[3] Legislative Council, Property Taxation, p. 31.

[4] Cohea, "Property Tax Assessment," p. 4.

[5] Montana Constitutional Convention Commission, Montana Constitutional Convention Studies, Taxation and Finance (Helena, Montana: Montana Constitutional Convention Commission, 1972), p. 64.

[6] Ibid., p. 74.

[7] Local Government Committee Proceedings, 1972 Constitutional Convention, Montana Historical Society Archives, Record Group No. 22, Box 3, File Folders 3-16, 3-17, and 3-19.

[8] Department of Revenue, Report of the State Department of Revenue for the Period July 1, 1974 to June 30, 1976 (Helena, Montana: Department of Revenue, 1976), p. 7.

[9] Patterson, Jr. v. State Department of Revenue, 171 M 168, 557 P2d 798 (1976).

[10] Gregg Groepper, interview by author, Helena, Montana, December 1987.

[11] Office of Legislative Auditor, Performance Audit Property Assessment Division Department of Revenue (Helena, Montana: Office of Legislative Auditor, 1987), p. 63.

[12] Robert M. Clatanoff, Patterns of Property Tax Administration in the United States (Chicago: International Association of Assessing Officers, 1986), pp. 72-104 passim.

[13] Gregg Groepper interview, December 1987.

[14] Testimony of Marian Olson, Montana Assessors' Association, Revenue Oversight Committee meeting, January 15, 1988.

[15] Legislative Auditor, Performance Audit, p. S-4.

[16] Ibid., p. 93.

[17] Clatanoff, Property Taxation, p. 96.

[18] Gregg Groepper interview, December 1987.

[19] Fallon County, et al. v. State of Montana, et al., 45 St. Rep. 748, 753 P2d 338 (1988).

CHAPTER TWO

IMPLEMENTATION OF SENATE BILL NO. 71

A. Background

In November of 1986, the voters of Montana passed Initiative 105. The initiative limited the amount of taxes levied on property classes three, four, six, nine, twelve, and fourteen to the amounts levied for taxable year 1986.* The initiative was to take effect on July 1, 1987, unless the 50th Legislature passed an act lowering taxes on these property classes and establishing alternative revenue sources. According to its drafters, the initiative's purpose was to balance the state and local tax systems by decreasing the reliance on property taxes and utilizing other sources of revenue.

When the Legislature convened in January of 1987, two bills were introduced to clarify I-105 and to extend the tax limitation to all property classes. (SB 71 and HB 575) House Bill No. 575 also specified exceptions to the tax limitation, e.g. new construction, reclassification, annexation, etc. The bill was later amended so that if a taxing unit's taxable valuation decreased by 5% or more from the previous tax year, the taxing unit could levy additional mills to compensate for the decreased valuation, but the mills levied could not exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit. House Bill No. 575 passed the House but failed to meet the deadline for transmittal to the Senate. Senate Bill No. 71, however,

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*In general, the tax limitation affected agricultural realty and products, residential property, and business property.

was transmitted to the House where it was amended to include the provisions of HB 575. The bill was further amended to allow a taxing unit to exceed the 1986 limit if the voters of the taxing unit approved a resolution to that effect. Senate Bill No. 71 eventually passed and went into effect on July 1, 1987.

In the spring of 1987, a number of public officials from around the state asked the Attorney General for his opinion on a number of issues regarding I-105 and SB 71. Among these was the question of whether a taxing unit which raised its mill levy pursuant to the 5% exception in the bill could consider that higher mill levy as a base for future years. In August, the Attorney General rendered his opinion, finding, among other things, that the applicability of the 5% exception must be determined anew each year with reference to the taxable valuation of the previous year.[1] In other words, the 5% exception is not continuing in nature; i.e., "if in the next tax year assessed valuation does not decrease by 5 percent or more, the individual taxpayer's liability to a taxing unit may not exceed the 1986 tax year amount irrespective of the number of mills levied."[2]

This opinion has resulted in hardships for many Montana counties, especially those oil-producing counties that experienced severe losses in taxable valuation in 1987 but whose valuation leveled off or only dropped slightly in 1988.

B. Committee Activities

At its September 11, 1987, meeting, the Revenue Oversight Committee (ROC) heard from John LaFaver, Director of the Department of Revenue (DOR) regarding the Attorney General's opinion on SB 71. He told the committee that

the department did not believe that this interpretation of the 5% exception was consistent with legislative intent. Therefore, the department asked the Attorney General to reconsider his opinion. The committee voted unanimously to endorse the department's interpretation of SB 71, namely that the 5% exception is continuing in nature, and to notify the Attorney General of the endorsement.

At the November meeting of the ROC, Mr. LaFaver informed the committee members that the Attorney General had notified the department that his opinion would not change, and the DOR was obligated to establish a rule consistent with the opinion. The committee discussed the possibility of resolution of the issue at a special legislative session, should one be called.

At the January meeting of the ROC, the DOR reported on the recently published rule that complied with the Attorney General's opinion. The committee discussed the possibility of polling the Legislature to determine the legislative intent of the 5% exception outlined in SB 71. However, it was felt that the poll would be a waste of time at that point as there was no pending litigation to overturn the Attorney General's opinion. Instead, the committee decided to have staff draft amendments to SB 71 to correct the problem. The amendments would then be ready for introduction at a special session, should one be called.

The amendments were presented to the ROC in February. (Appendix A.) The amendments struck out the word "previous" and substituted the date "1986". The changes were intended to clarify the legislative intent, as understood by the committee, that the 5% exception be continuing in nature. The bill draft was accepted by the

committee as a committee bill.

C. Summary

The special session was never called. Therefore, the legislation amending SB 71 will be introduced in the 1989 legislative session.

Demanding further attention, however, is the fact that SB 71 is scheduled to terminate on December 31, 1989, leaving I-105 and its tax limitation on only six classes of property and eliminating all together the 5% exception. Some alternatives to this dilemma are repealing I-105, amending it to allow the 51st Legislature to address the issue of tax reform, extending the termination date on SB 71, or leaving the present termination date but allowing the 5% exception to apply to the 1989 taxable year. These are decisions that will have to be made by the 51st Legislature.

NOTES

[1] Opinion of the Attorney General, Volume No. 42, Opinion No. 21 (1987), p. 2.

[2] Ibid., p. 10.

APPENDIX A

__________ BILL NO. ______

INTRODUCED BY ____________________________________

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAW LIMITING PROPERTY TAXES TO 1986 LEVELS TO ALLOW AN INCREASE IN TAX LIABILITY WHEN THERE IS A DECREASE IN TAXABLE VALUATION FROM THE 1986 TAX YEAR; AMENDING SECTION 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-10-412, MCA, is amended to read:

"15-10-412. (Temporary) Property tax limited to 1986 levels -- clarification -- extension to all property classes. Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and

mills levied, whichever is less for each taxing unit.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) construction, expansion, replacement, or

remodeling of improvements that adds value to the property;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used

in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the ~~previous~~ <u>1986</u> tax year. If a taxing unit's taxable valuation decreases by 5% or more from the ~~previous~~ <u>1986</u> tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment

categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) electric company street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity." (Terminates December 31, 1989--sec. 6, Ch. 654, L. 1987.)

Section 2. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. Effective date. [This act] is effective on passage and approval.

-End-

CHAPTER THREE

BENEFICIAL USE TAX AND PROTESTED TAXES

A. Background

In 1979, the Bonneville Power Administration (BPA) announced plans to construct a high-voltage power transmission line from Broadwater County westward through six more Montana counties. The purpose of this line was to carry electrical power from Colstrip Projects Three and Four to the Pacific Northwest. This announcement aroused a great deal of concern in Montana because the line was to have been built and ownership retained by the Montana Power Company (MPC). MPC had built the line from Colstrip to Townsend and paid property taxes on it, but BPA, a federal agency, was tax exempt. Congress, in its authorizing legislation, chose not to "skirt" BPA's tax-exempt status. Therefore, the affected counties did not benefit from any increase in their tax bases.

According to a BPA spokesperson, the federal agency became involved in construction of the power line between Townsend and Hot Springs because of difficulties with the right-of-way across the Flathead Indian Reservation[1]. MPC had tried to negotiate a corridor across the reservation with the tribe but had failed. In late 1977, MPC requested that BPA build the western portion of the line.

Construction began in 1981, with the first portion completed in 1983. During the 1983 legislative session, Representative Bob Marks of Jefferson County introduced HB 747 to extend Montana's beneficial use tax (15-24-1203, MCA) to include electric transmission lines and associated facilities having a design capacity of 500

kilovolts or more.

The measure was supported by county officials, school officials, the Office of Public Instruction, the Montana School Boards Association, and some county taxpayers. It was viewed not only as a way to increase a jurisdiction's taxable valuation but also as a means of providing tax relief to other property owners.[2] The measure passed both houses of the Legislature, was signed by the governor, and became Chapter 683, Laws of 1983.

In August 1984, a suit was filed in the First District Court in Helena challenging Montana's beneficial use tax statute. The suit was brought by the five utility companies using the BPA power line: Portland General Electric, Puget Sound Power and Light, Pacific Power and Light, Washington Water Power, and Montana Power. Named as defendants were the State of Montana and the seven counties through which the line passed. The defendants will be referred to as the state for purposes of this report. Similar suits were filed in 1985 and 1986.

Realizing the fiscal problems that would arise as a result of this tax protest, the 1985 Legislature passed HB 704 (Chapter 726, Laws of 1985), which was designed to help the affected jurisdictions. This legislation allows a county, municipality, or school district to have its taxable valuation reduced by the amount of the protested valuation, but only if the protested valuation is 5% or more of the total taxable valuation of the jurisdiction. Implementation of the provisions of the statute requires a county commission to pass a resolution requesting the Department of Revenue to adjust the county's certified taxable value.

Implementation of the provisions of HB 704 met with very

little success. Of the 734 taxing jurisdictions in Montana, only two school districts, in Broadview, took advantage of the bill. These districts were not in a county impacted by the BPA power line. Of the seven counties affected by the tax protest, only Jefferson County expressed an interest in the provisions of HB 704. In July 1985, the county commission passed the required resolution but later rescinded it. The county was already at the maximum levies permitted, which left very little flexibility to allow for the protest adjustments. Also, the commissioners were concerned that the resolution could result in other property owners in similar circumstances protesting their valuations.[3]

Perhaps as a result of nonuse by the affected jurisdictions or because of the implied impracticality of HB 704, the Legislature made a second attempt to alleviate the financial burdens imposed by protested taxes. In a special session in June 1986, the Legislature in effect repealed HB 704 by adopting HB 44 (Chapter 26, Special Laws June 1986). This new legislation contained provisions that:

(1) limited the amount of protested tax, in most instances, to the amount of tax for the current year that was in excess of the amount of the tax in the preceding year;

(2) required that the protested amount for the current year be escrowed and unavailable for appropriation until final resolution of the protest;

(3) allowed a taxing jurisdiction affected by a multi-year protest to appropriate the protested amount, except for the amount protested in the first year; and

(4) provided a complex mechanism for the refund of protested taxes.

To date, only a few jurisdictions have made use of this

statute. School officials have expressed concern over the repayment provisions should the court cases filed by the utility companies ultimately be decided against the state. This concern has made the officials wary of using the escrowed taxes available to them.

B. Committee Activities

With the apparent failure of both HB 704 and HB 44 to provide a solution to the protested tax problem, legislators and school officials decided to seek some new solutions. On November 4, 1987, members of the Legislative Council staff, Representative Bob Marks, Senator Tom Beck of Deer Lodge, and some school officials met to discuss the problem. The decision was made to ask the Revenue Oversight Committee (ROC) to put this issue on their interim agenda.

At the November 20, 1987, meeting of the ROC, Representative Marks, Senator Beck, and selected school spokespersons presented their case. As a result, the committee instructed staff to research some possible solutions and present them at the ROC meeting in January.

The following options were identified by staff as possible solutions to the problem:

(1) Repeal the beneficial use tax.

(2) Establish a state fund from which school districts could borrow, and make provision for repayment of loans through the district's regular budget process.

(3) Seek a state appropriation to help school districts finish the current (FY 1988) school year.

(4) Tie up only the first year's protested taxes and make the other years' protested taxes available for appropriation. If the state loses the court cases,

the school districts would pay back the principal and the state would pay the interest. In the event of a district having to repay the taxes, the state would make some assurances as to the district's ability to get bonding. Have the state grant the affected districts the difference between what they would have received in foundation program funds with and without the BPA property valuation should the court cases be found in favor of the plaintiffs. Remove the effects of I-105** on the affected school districts' property.

(5) Use the taxes from centrally assessed properties to fund the school foundation program.

(6) Statutorily exclude from the tax base any property valuation involved in a protest or appeal, and hold protested taxes in a state escrow account until the protest or appeal is resolved.

(7) Request that the BPA make a financial contribution to the state (or its affected political subdivisions) for the performance of services, e.g., law enforcement, fire protection.

(8) Have the Legislature request that Congress allow the state to assess BPA the same rate of payment or fee as other similar types of property would be assessed for taxes.

(9) Exclude the protested valuation temporarily while the court cases are being decided. If the state wins, add the valuation back in.

(10) Create a protested tax reimbursement fund that would disburse funds to jurisdictions affected by tax protests. These jurisdictions would be held harmless from any repayment should the protest go against them. This account would not be funded by protested taxes. However, if the protest is decided in favor of the jurisdiction, the county treasurer would deposit the protested taxes in the account.

(11) Provide school districts with the budgetary authority to budget for the prior year's tax protests and delinquencies.

(12) In the event that school districts have to repay the protested taxes, a provision should be made for them

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**Initiative 105, passed by the voters in 1986, limited the amount of taxes levied on certain classes of property to the amount levied for taxable year 1986.

to either call for a one-time special levy, issue bonds, or make payments from a special levy over a specified period of time. The districts would not be held liable for the interest.

(13) Make the effective date of HB 44 retroactive to July 1, 1983.

(14) If legislation similar to HB 704 is enacted, allow the jurisdictions affected by the tax protest to request that the county commissioners exclude the protested valuation.

(15) Revise HB 44 to allow for repayment of interest at 6% or in the amount of actual interest earned, whichever is lower.

(16) Require the state to pay interest on only the first year of the protested taxes.

(17) If the state loses the court cases and the taxable valuation is removed, the state will provide direct payments to the taxing jurisdictions for any losses beyond 6% of the taxable valuation per year. The taxing jurisdictions will be responsible for a maximum loss of 6% each year. The state will continue to reimburse the jurisdictions for any loss exceeding 6% each year until the previously protested taxable valuation is removed. The state will also provide a direct appropriation to a taxing jurisdictions's reserve fund in order to recoup the jurisdiction's reserves in the amount attributable to the loss from the protest.

(18) Funds that are calculated by a percentage to determine the level of state contribution will be recalculated for the years under protest. The increase of state allocation will be returned to the school districts over the same number of years.

(19) Require that the counties deposit the revenue from the mandatory 17- and 28-mill levies in the state equalization fund. The state would then reimburse the school districts at 100%. If the counties experience a shortage because of tax protests, the school districts would still receive 100%.

These options were discussed at a meeting in December 1987 with ROC staff, legislators, county and school officials, and representatives from the Montana

Association of Counties, Montana School Boards Association, and the utility companies involved in the lawsuit. Options 4, 10, 12, 13, 14, and 15 were chosen as possible solutions. The group suggested a phased-in repayment period for any taxing jurisdiction that has used the protested funds in the escrow account. The school officials also wanted some assurances that their general fund reserves, depleted because of the tax protest, will be restored to preprotest levels if the state wins the lawsuits. These options were offered to the ROC in January 1988 in the form of four bill drafts.

The first two drafts of the proposed bill contained provisions to:

(1) make the interest on the protested taxes a state responsibility;

(2) restore the taxing jurisdictions' general fund reserves with the escrowed taxes should the court cases be decided in the state's favor;

(3) allow a phased-in repayment of the protested taxes should the state lose the cases (each bill draft proposed a different length of time for the phase-in period); and

(4) provide a retroactive applicability date of July 1, 1983.

The third draft of the bill allowed a taxing jurisdiction to exclude any protested valuation from its taxable valuation for purposes of computing the mill levies. The protested valuation would have to exceed 5% of the jurisdiction's taxable valuation before it could be excluded.

The fourth and final draft of the bill created a special state fund from which taxing jurisdictions could draw money to replace property taxes held in protest accounts.

The jurisdictions would not be liable for repayment of these monies to the special fund.

Committee discussion centered on the use of the funds released from the escrow account should the state prevail in the cases. There was also some concern expressed about how I-105 would affect the exclusion of the protested valuation outlined in the third draft of the bill. The committee asked staff to prepare draft legislation incorporating the ideas in the second and third drafts of the bill as well as the amendments suggested during the committee discussion.

At the February 1988 meeting, the committee was presented with a bill draft that contained provisions to:

(1) allow a taxing unit to exclude the taxable value of property subject to a tax protest with the exclusion constituting a decrease in taxable valuation for the purposes of 15-10-412, MCA;

(2) make the interest on the protested taxes a state responsibility;

(3) allow for an extended payback period should the tax protest be decided in favor of the taxpayer; and

(4) restore the general fund reserves of the taxing jurisdictions with the escrowed taxes if the case is decided in favor of the state.

Representatives from the utility companies expressed dismay over the extended payback period as did some committee members. They felt that this provision was unfair to taxpayers whose money had been held in a protest account for a number of years. The utility representatives supported the present statutory provision that allows a taxing jurisdiction to issue bonds for the repayment of protested taxes. The taxpayer would be satisfied, and the jurisdiction's obligation would be

spread over a longer period of time. The utility companies also expressed support for a higher rate of interest on the escrowed funds and suggested 10%.

The use of the released funds by the jurisdiction was also the subject of considerable discussion. Some committee members felt that the taxpayers who bore the brunt of the protest should receive some tax relief in the form of lowered levies. The size of general fund reserves also generated some discussion. The jurisdictions wanted their general fund reserves restored to the amount retained prior to the protest while some committee members felt that a cap should be placed on the restoration of the reserves. A county commissioner stated that a jurisdiction has reserves in other funds besides the general fund. In a tax protest situation, a taxing unit could conceivably deplete these other reserve funds, and these other reserves should also be restored.

The committee directed staff to look into some of the problems with the draft legislation that were identified at the meeting. The committee agreed to reconsider the draft bill at a subsequent meeting.

A final draft of the bill was presented to the ROC at its June 10, 1988, meeting. The bill incorporated all of the changes that had been suggested by the committee over the course of the previous meetings. The major provisions of the bill were as follows:

(1) A taxing jurisdiction would be allowed to exclude protested valuation from its taxable valuation for the purpose of setting the tax levy if the protested valuation exceeds 5% of the jurisdiction's total taxable valuation. This exclusion would constitute a decrease in taxable value for the purposes outlined in 15-10-412(7), MCA.

(2) The rate of interest on the protested funds would be the rate of interest generated from the state short-term investment pool but not less than 6% a year no matter where the money was invested.

(3) The state would be required to pay the interest that would have been earned on any of the taxes drawn out of the protest fund by a taxing jurisdiction should the protesting taxpayer win. Should the state win the protest, the state would retain all of the interest earned on the protested amount.

(4) A taxing jurisdiction would be allowed to repay a successful tax protest by issuing bonds without an election; in such a case, the annual limit on the property taxes to be levied to pay for such bonds would be removed. Such levies would be excluded from the limitation on the amount of taxes levied in accordance with 15-20-412, MCA.

At the June ROC meeting, some school officials from the affected districts suggested two revisions to the draft bill. The first would make the bonding provisions subject to exemption from the bonding limits imposed on taxing jurisdictions by statute. The second revision called for the state to guarantee the bonds with its "full faith and credit."[***] These suggested revisions were thoroughly discussed, but no action was taken on the bill draft at this meeting. However, at the September 9, 1988, meeting, the ROC voted to accept the bill draft presented at the June meeting for introduction at the next legislative session (Appendix A). The committee decided not to include in the final draft of the bill the revisions proposed by the school officials, but decided to amend the revisions into the bill during the session, if desired.

[***]A state guarantee of these bonds would mean the creation of a state debt thus requiring a two-thirds vote of the Legislature for passage of the bill.

C. Summary

In December 1987, Judge Henry Loble ruled that the state's beneficial use tax, imposed on five Colstrip utility companies for transmitting power over federally owned Bonneville Power Administration lines, was legally imposed and, therefore, the tax revenues held in escrow must be freed. This was the first ruling on a series of such suits. Since then, Judge Loble has issued the same ruling on a second suit, and a decision is awaited on the third. The utility companies have appealed the two decisions to the Montana Supreme Court, which is awaiting Judge Loble's third decision before hearing the cases.

The legislation recommended by the ROC at its September meeting will be the third attempt by the Legislature to address this issue. The two previous attempts, HB 704 (Chapter 726, Laws of 1985) and HB 44 (Chapter 26, Special Laws June 1986), proved unsuccessful at providing a solution to the problem of protested taxes for the affected jurisdictions. It remains to be seen if this latest attempt will ease the financial burden that this tax protest has caused for the taxing jurisdictions, especially school districts, in the seven affected counties.

NOTES

[1] George Eskridge, "BPA Spokesman Writes About Colstrip," Montana Standard, June 29, 1982, p. 4.

[2] Testimony of Maynard Olson, Office of Public Instruction, Senate Taxation Committee, March 25, 1983.

[3] Montana Legislative Council, Property Tax Delinquencies, Tax Sales, and Tax Deeds (Helena, Montana: Montana Legislative Council, 1986), p. 10.

APPENDIX B

_____ BILL NO. _____

INTRODUCED BY ______________________

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO PROPERTY UNDER A TAX PROTEST OR APPEAL PROCEEDING; ALLOWING A TAXING UNIT TO EXCLUDE THE TAXABLE VALUE OF PROPERTY SUBJECT TO A TAX PROTEST IN FIXING LEVIES; MAKING INTEREST ON PROTESTED TAXES A STATE RESPONSIBILITY; ALLOWING FOR BOND ISSUES WITHOUT AN ELECTION TO REPAY LOST TAX PROTESTS; EXCLUDING TAX PROTEST REPAYMENT BONDS FROM THE LIMITATIONS ON THE AMOUNT OF BONDED INDEBTEDNESS; AMENDING SECTIONS 2-9-316, 7-6-2321, 7-6-4232, 7-7-2202, 7-7-2203, 7-7-2221, 7-7-4101, 7-7-4201, 7-7-4221, 15-1-402, 15-10-202, 15-10-412, 20-9-142, 20-9-403, 20-9-406, AND 20-9-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-6-2321, MCA, is amended to read:

"**7-6-2321. Fixing of tax levy.** (1) On the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal

year. ~~The~~ Except as provided in subsection (2), the taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.

(2) The taxable value of property that is the subject of a property tax protest or appeal as of the first Monday in August may be excluded from the county's taxable valuation if the taxable value of all of the property under protest or appeal exceeds 5% of the county's total taxable valuation.

~~(2)~~(3) The tax levy shall be made in the manner provided by 15-10-201."

Section 2. Section 7-6-4232, MCA, is amended to read:

"**7-6-4232. Fixing of tax levy.** (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. ~~The~~ Except as provided in

subsections (2) and (3), the taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) The taxable value of property that is the subject of a property tax protest or appeal as of the first Monday in August may be excluded from the city's taxable valuation if the taxable value of all of the property under protest or appeal exceeds 5% of the city's total taxable valuation.

~~(3)~~(4) Each levy shall be made in the manner provided by 15-10-201."

Section 3. Section 20-9-142, MCA, is amended to read:

"20-9-142. Fixing and levying taxes by board of county commissioners. (1) On the second Monday in August, the

county superintendent shall place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. ~~It~~ Except as provided in subsection (2), it shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district.

(2) The taxable value of property that is the subject of a property tax protest or appeal as of the first Monday in August may be excluded from the district's taxable valuation upon notification to the board of county commissioners by the school district trustees if the taxable value of all of the property under protest or appeal exceeds 5% of the district's total taxable valuation."

Section 4. Section 15-10-202, MCA, is amended to read:

"15-10-202. Certification of taxable values and millage rates. (1) At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new

construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions and of the taxable value of property that is the subject of a protest or appeal in accordance with 7-6-2321, 7-6-4232, or 20-9-142, the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

(2) A taxing authority shall inform the department and the board of county commissioners in writing on or before July 15 if it wishes to exclude the taxable value of property subject to a tax appeal or tax protest from its taxable valuation pursuant to 7-6-2321, 7-6-4232, or 20-9-142."

Section 5. Section 15-1-402, MCA, is amended to read:

"15-1-402. **Payment of taxes under protest -- action to recover.** (1) The person upon whom a tax or license fee is being imposed may proceed under 15-1-406 or may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested.

The payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which grounds may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.

(4) ~~Any~~ An action instituted to recover any such portions of tax or license fee paid under protest ~~shall~~ must be commenced and summons timely served within 60 days after

the date of the final decision of the state tax appeal board.

(5) ~~When--any~~ If a protested tax or license fee is payable in installments, ~~then-any~~ a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and no action or suit need be commenced to recover ~~the--same,--but~~ the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest ~~shall-determine~~ determines the right of the party paying such subsequent installment to have the same or any part thereof refunded to him or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(6) All ~~portions-of~~ taxes and license fees paid under protest to a county or municipality ~~shall~~ must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and ~~shall~~ must be retained in ~~such~~ the protest fund until the final determination of any action or suit to recover the same unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7). Nothing contained herein prohibits the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7,

chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(7) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(8) (a) If no action is commenced within the time herein specified or if such action is commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax or license fee ~~shall~~ must be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs, less a pro rata deduction for the costs of administration of the protest fund, ~~and~~ related expenses charged the local government units, and the interest earned on the protested funds or income derived

from their investment that must be deposited to the credit of the state general fund.

(b) If such action is finally determined adversely to a county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax or license fee deposited in the protest fund, and not released pursuant to subsection (7), as the person holding such judgment is entitled to recover, together with interest thereon ~~at the rate of 6% a year~~ from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment~~, then interest owed,~~ and ~~lastly~~ then to costs.

~~(c)~~(d) If the protest action is decided adversely to a

taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments~~, interest,~~ and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments~~, interest,~~ and costs, for which the taxing jurisdiction is proratably responsible. The interest earned on the protested funds released in accordance with subsection (7) must be refunded to the taxpayer by the state.

~~(d)~~(e) In satisfying the requirements of subsection ~~(8)(c)~~ (8)(d), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the ~~rate of 6% a year~~ greater of the rates referred to in subsections (8)(b)(i) and (8)(b)(ii) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(9) A taxing jurisdiction may satisfy the requirements

of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize ~~such~~ the bonds~~;-provided-the levy-for-payment-of-any-such-bonds-may-not--exceed;--in--the aggregate;-10-mills-annually~~."

Section 6. Section 15-10-412, MCA, is amended to read:

"**15-10-412. (Temporary) Property tax limited to 1986 levels -- clarification -- extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of

improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) construction, expansion, replacement, or remodeling of improvements that adds value to the property;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the previous tax year. If a taxing unit's taxable valuation decreases by 5% or more from the previous tax year, it may levy

additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit. <u>Exclusion of the taxable value of property under a property tax protest or appeal from a taxing unit's taxable value under 7-6-2321, 7-6-4232, or 20-9-142 constitutes a decrease in taxable valuation for purposes of this subsection.</u>

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) electric company street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution

of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

<u>(11) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.</u> (Terminates December 31, 1989--sec. 6, Ch. 654, L. 1987.)"

Section 7. Section 2-9-316, MCA, is amended to read:

"2-9-316. **Judgments against governmental entities except state.** A Except as provided in 15-1-402, a political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually."

Section 8. Section 7-7-2202, MCA, is amended to read:

"7-7-2202. **Authority to issue general obligation bonds to satisfy judgments.** (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on

the credit of the county, as more specifically provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, when:

(a) there are not sufficient funds available to pay such judgment; and

(b) sufficient money cannot be raised to satisfy such judgment by an annual tax levy of 10 mills levied on all the taxable property within the county through a period of 3 years.

(2) The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board and the judgment creditor."

Section 9. Section 7-7-2221, MCA, is amended to read:

"7-7-2221. **Issuance of certain general obligation bonds without election.** Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line, as set forth in

7-7-2201(5); and

(2) funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, as set forth in 7-7-2202 <u>and 15-1-402</u>."

Section 10. Section 7-7-4101, MCA, is amended to read:

"7-7-4101. **Purposes for which indebtedness may be incurred.** The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes:

(1) erection of public buildings;

(2) construction of sewers, sewage treatment and disposal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) construction of bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) to acquire, open, and/or widen any street and to improve the same by constructing, reconstructing, and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost thereof;

(6) the purchase of fire apparatus and street and

other equipment;

(7) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water; and

(8) the funding of outstanding warrants and maturing bonds~~.~~<u>; and</u>

<u>(9) the repayment of tax protests lost by the city, town, or other municipal corporation.</u>"

Section 11. Section 7-7-4221, MCA, is amended to read:

"7-7-4221. **Election on question of incurring indebtedness -- exception.** (1) Except as provided in subsection (2) <u>and 15-1-402</u>, whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state."

Section 12. Section 20-9-40 , MCA, is amended to read:

"20-9-403. Bond issues for certain purposes. (1) The

trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(e) funding a judgment against the district, including the repayment of tax protests lost by the district.

(2) Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the 9th grade of the high school is served thereby."

Section 13. Section 20-9-421, MCA, is amended to read:

"20-9-421. **Election to authorize the issuance of school district bonds and the methods of introduction.** A

school district shall not issue bonds for any purpose other than that provided in 15-1-402 and 20-9-412 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of 20-9-425."

Section 14. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. **Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in

15-23-612, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds which, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail which will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) ~~shall~~ does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests

lost by the county."

Section 15. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. **Limitation on amount of bonded indebtedness.** (1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 16. Section 20-9-406, MCA, is amended to read:

"20-9-406. **Limitations on amount of bond issue.** (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The

45% maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district <u>or to bonds issued for the repayment of tax protests lost by the district</u>. All bonds issued in excess of such amount shall be null and void, except as provided in this section.

(2) When the total indebtedness of a school district has reached the 45% limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(3) Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded are applied towards the payment of such bonds and the refunding bond issue is decreased accordingly."

Section 17. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 18. Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983.

-End-

CHAPTER FOUR

MISCELLANEOUS ISSUES
BEFORE THE REVENUE OVERSIGHT COMMITTEE

During the 1987-88 interim, the Revenue Oversight Committee considered and dealt with a number of concerns, aside from the formally structured studies and reviews, that arose from interpretations of statutes or rules or from a lack thereof. Committee action resulted from some of those situations; in others, the Committee could do no more than recognize their existence.

These brief synopses are intended to record the Committee's interest and its action, if any.

Implementation of Senate Bill No. 200: Taxes on Vehicles

By action of the 1981 Legislature, light vehicles were removed from taxable status and made subject to a fee in lieu of tax.[1] In 1987, under SB 200, the fee-in-lieu-of-tax system was repealed and light vehicles once again became subject to property tax.[2] Under the current law, the value must be determined, if possible, by referring to the following publications of the National Automobile Dealers Association: (1) Official Used Car Guide, Mountain States Edition; (2) Appraisal Guides Official Older Used Car Guide, National Edition; or (3), The Value Guide to Cars of Particular Interest.

Many taxpayers raised questions about the valuation of vehicles. One individual cited the large disparity placed on similar vehicles of the same vintage. One vehicle in question had been (but was no longer) listed in a guide, and a $500 minimum value was placed on the vehicle. A similar vehicle of the same vintage was

listed in the guide and valued at $2,250 for tax purposes.[3]

The Committee staff determined that a conflict existed between the language of SB 200 and a Department of Revenue rule. Senate Bill No. 200 states:

> If the value shown in any of the appraisal guides listed in this section is less than $1,000, the department shall value the vehicle at $1,000.

However, another section of the law states that if a vehicle had been listed in a guide but is no longer listed, a $500 minimum value must be placed on the vehicle. The Department attributed the conflict to an oversight and adopted a rule that the minimum value be $500.

The Department's position is that the inequity results from a statutory provision that is beyond the authority of the Department. A floor amendment lowered the minimum value from $1,000 to $500. Three sections should have been amended, but only two were. Utilization of two minimum values could create a constitutional question.

The sponsor of SB 200 believed the Department could remedy the situation by rules. The Department director believed that only a statutory amendment would be legally effective.

The Committee took no action on the subject.

Lodging Facility Use Tax: Applicability to University System

In its first year of effectiveness, the accommodations tax of 4% (distinguished in the Montana Code Annotated under the appellation "lodging facility use tax") imposed by the provisions of HB 84 enacted by the 50th Legislature[4] grossed more than $4.5 million. The proceeds of this new tax were designated to promote Montana's travel and tourism industry. As might be expected from the implementation of a tax that departed from Montana's time-honored methods of raising revenue, there were problems. The Department of Revenue informed the Revenue Oversight Committee of a few misunderstandings about the applicability of the tax.

Some of the problems may have arisen from lack of knowledge of liability for the tax, and the Department conducted a vigorous education campaign to overcome that ignorance. If the education program does not prove effective, the Department said litigation would be pursued.

Another problem arose concerning federal campgrounds and the jurisdiction of the state tax. Any action to collect the accommodations tax due on use of federal facilities would have to be taken in federal courts, and the Department is not convinced that that would be a wise use of the state's legal resources.

A third problem concerned the use by nonstudents of University System facilities during public events--a use in competition with taxpaying motels and hotels. After hearing the varying viewpoints on the liability of the University System for collection and remission of the accommodations tax, the Committee's consensus was that

the Department and the University System should confer to find a mutually acceptable middle ground. Subsequent discussions between the Department and the University System culminated in an agreement that rental of university facilities are taxable events except as related to:

(1) activities offered for college credit;

(2) activities offered primarily for students enrolled in primary or secondary schools or universities (e.g., computer camps, athletic camps, science camps, etc.); and

(3) activities that meet all of the following criteria: they must be sponsored exclusively by the university, staffed exclusively by university faculty, and contain an instructional component. Therefore, a weekend workshop sponsored by MSU on agricultural practices and taught exclusively by faculty staff would be exempt; the AAU Summer track meet for seniors would not be exempt.

The Committee encouraged the acceptance of this agreement.

Authority of the Revenue Oversight Committee to Review Department of Revenue Rules

The power of the Administrative Code Committee (ACC) under the Montana Administrative Procedure Act (MAPA)[5] is paralleled to a limited extent by the authority of the Revenue Oversight Committee (ROC) vis-a-vis the Department of Revenue[6]. MAPA authorizes the ACC to

review all proposed rules filed with the Secretary of State except that rules proposed by the Department of Revenue (DOR) may be reviewed by the ACC only for compliance with the procedural requirements of MAPA. The substantive review of DOR rules is performed by the ROC. Duplication and uncertainty are inherent in this dual review process.

Approved by the Committee and recommended for enactment is a draft bill [see Appendix A] that would amend MAPA to grant to the ROC the same powers over DOR rules that are now granted to the ACC over all other agency rules. Specifically, the bill would enable the ROC to: (1) require DOR to hold a hearing; (2) submit testimony at a DOR hearing; (3) require DOR to publish full or partial text of material incorporated into a rule by reference; (4) obtain DOR's rulemaking records; (5) require DOR to prepare an economic impact statement; (6) petition or recommend that DOR adopt, amend, or repeal a rule; (7) publish objections to DOR rules in the Montana Administrative Register (MAR); (8) poll the Legislature; (9) recommend to the Legislature that DOR's rulemaking authority be amended or repealed in a given area; (10) petition DOR for a declaratory ruling on the applicability of a rule, including judicial review of that ruling at the ROC's request; (11) seek judicial review of an emergency DOR rule; (12) institute, intervene in, or otherwise participate in proceedings involving DOR under MAPA in state and federal courts; (13) require DOR to provide copies of documents filed in a proceeding involving interpretation of MAPA or an agency rule; and (14) require DOR to review its rules biennially.

Revenue Estimating for Official Legislative Budget

In an effort to dispose of a recurring problem, the Revenue Oversight Committee recognized the need for a single official legislative budget estimate as the basis for consideration before and during the legislative session. An essential element of any budget is anticipated revenue. Almost all of state government's revenue originates as some form of tax levied and collected as provided by statute. The Revenue Oversight Committee, composed primarily of the senior members of the taxation committees of each house, is qualified to prepare the revenue element of the official budget estimate.

The Committee directed its staff to prepare language that could be adopted to amend statutes and legislative rules to extend the duties of the Revenue Oversight Committee to include the preparation of revenue estimates prior to each regular session and continuing through the session. [See Appendix B]

Audits of Oil and Gas Net Proceeds

At its June 22, 1987, meeting, the Revenue Oversight Committee heard sharp criticism from the oil and gas industry on the way the Department of Revenue conducted its audit program of net proceeds tax returns. The industry claimed that the Department was inconsistent in the treatment of allowable deductions for the production of oil and natural gas and incorrectly included production tax reimbursements as part of the wellhead price.

The industry also claimed that the Department frequently

valued natural gas on the basis of final purchase rather than the wellhead price. At issue here was whether an arm's-length contract existed between the producer and the company that gathers and compresses the gas for final delivery.

The Committee instructed its staff to investigate the controversy surrounding the audits and also recommended that the Department and the oil and gas industry meet to discuss specific items of contention.

As a result of this action and a meeting between industry and representatives of both the Governor's Office and the Department of Revenue on July 22, 1987, the Department and oil and gas producers agreed to work together to formulate rules clarifying the net proceeds tax.

The Department and producers met several times between July 1987 and February 1988 in an attempt to reconcile differences that at times appeared to be irreconcilable. Committee staff attended these meetings and presented several reports to the Committee on the progress being made between the industry and the Department.

Based on these meetings, the Department of Revenue promulgated modified regulations and presented these proposed rule changes to the Committee on February 26, 1988. At the same time, the Montana Petroleum Association expressed satisfaction with certain aspects of the rule changes but emphasized that remaining differences would have to be resolved during the formal hearing process.

Cooperative Agreement for Assessment and Collection of Taxes, Licenses, and Permits

During the 1987 legislative session, the Revenue Oversight Committee cosponsored SB 47, which would have allowed the state to enter into a cooperative agreement with an Indian tribe for the purpose of assessing and collecting taxes, licenses, and permits. Under this type of agreement, the state would collect a state tax imposed on commodities purchased on the reservation by non-Indians and an identical tribal tax imposed on commodities purchased on the reservation by Indians. The tribe and the state would then share the tax revenue according to a formula based on tribal and nontribal consumption. With the tribal governments beginning to exercise their authority to tax, the committee felt that this legislation would avoid costly litigation in resolving tax issues and would also prevent the probability of double taxation.

The legislation passed the Senate on a vote of 48 to 2. However, the House Taxation Committee recommended a "do not pass" and the full House concurred. Opposition to the bill centered on three issues: admission by the state of a tribe's right to impose taxes, collection by the state of a tax imposed by another sovereign government, and payment of taxes to a governmental entity that provides no services or right of appeal to the taxpayer.

During the 1987-88 interim, the Committee on Indian Affairs, also a cosponsor of SB 47, considered the reintroduction of the bill in the 1989 legislative session. Senator Del Gage, chairman of the committee, consented to speak to the Revenue Oversight Committee

members to seek their support for the reintroduction of this legislation.

At the April meeting of the Revenue Oversight Committee, Senator Gage addressed the committee members regarding this legislation. The committee voted to jointly sponsor the bill's reintroduction in 1989. The Department of Revenue also expressed interest in pursuing the legislation.

In November 1988, the Committee on Indian Affairs decided not to reintroduce SB 47 this session. The committee sent a letter to the Revenue Oversight Committee informing it of this decision. The Indian Affairs Committee also told the Revenue Oversight Committee that if it wished to reintroduce the legislation, either alone or in conjunction with the Department of Revenue, the Revenue Oversight Committee should feel free to do so. After some discussion, the Revenue Oversight Committee voted to rescind its previous motion to cosponsor the reintroduction of SB 47.

NOTES

[1]Ch. 614, Laws of Montana, 1981.

[2]Ch. 611, Laws of Montana, 1987.

[3]Research Memorandum, Implementation of Senate Bill No. 200, Ad Valorem Tax on Light Vehicles, David D. Boyher, Staff Researcher, Revenue Oversight Committee, Sept. 4, 1987.

[4]Ch. 607, Laws of Montana, 1987.

[5]Administrative Code Committee's Powers, report to the Administrative Code Committee, John MacMaster, staff attorney (October 1986).

[6]Revenue Oversight Committee's Review Functions and Powers Over Department of Revenue Rules, a report to the Revenue Oversight Committee, James H. Lear, staff attorney (April 1988).

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